

to or from the building or work by the employees of the construction contractor or the construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work by persons employed by the contractor or the subcontractor.

(c) *Contract.* Any contract which is entered into for actual construction, alteration, or repair, including painting and decorating, of a building or work financed with the assistance of any contribution of Federal funds made under the provisions of section 201(i) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2281).

(d) *Employed.* Every person paid by a contractor or subcontractor in any manner for his labor on construction work financed with the assistance of any contribution of Federal funds made under the provisions of section 201(i) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2281) is "employed" and receiving "wages," regardless of any contractual relationship alleged to exist.

[29 FR 12366, Aug. 28, 1964. Redesignated at 44 FR 56173, Sept. 28, 1979]

§ 308.3 Contract award requirements.

The obligations of the State, and of any political subdivision joining the State in its application for a Federal financial contribution under section 201(i) or section 205 of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2281, 2286), include, without limitation, the following:

(a) The requirement that the State include, verbatim, in each contract involving construction work in excess of \$2,000 and cause to be included, verbatim, in each subcontract thereunder, the provisions prescribed in § 308.4 and cause to be attached the applicable wage determination decision of the Secretary of Labor.

(b) The requirement that each advertisement of an invitation to bid shall indicate expressly that if the construction phase of the contract exceeds \$2,000:

(1) All laborers and mechanics employed by contractors or subcontractors in performance of the construction work shall be paid wages at rates not less than those determined by the Sec-

retary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a *et seq.*), and every such employee shall receive compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in any work-week, as the case may be, as provided in section 201(i) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2281) and in the Contract Work Hours Standards Act (76 Stat. 357) and,

(2) Bid specifications shall contain the labor standards provisions prescribed in § 308.4 of this part and shall have attached thereto the wage determination decision of the Secretary of Labor applicable to the project.

[38 FR 31526, Nov. 15, 1973, as amended at 40 FR 42736, Sept. 16, 1975. Redesignated at 44 FR 56173, Sept. 28, 1979]

§ 308.4 Contract provisions.

Each contract involving construction work in excess of \$2,000 and all subcontracts thereunder shall include as a part thereof the following labor standards provisions, in completed form, verbatim:

(a) *Minimum wages.* (1) All mechanics and laborers employed by the contractor or subcontractor in the performance of construction work hereunder will be paid unconditionally and not less than once a week and without subsequent deduction or rebate on any account, except such payroll deductions as are permitted by the Copeland Regulations (29 CFR part 3) of the Secretary of Labor, the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics; and the wage determination decision shall be posted by the contractor at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics

are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv). Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particularly weekly period, are deemed to be constructively made or incurred during such weekly period.

(2) The contracting officer of the (write in the name of the State or political subdivision) shall require that any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination, and a report of the action taken shall be sent by the State through the Federal Emergency Management Agency to the Secretary of Labor. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics, including apprentices and trainees, to be used, the question accompanied by the recommendation of the contracting officer of the (write in the name of the State or political subdivision) shall be referred by the State through the Federal Emergency Management Agency to the Secretary of Labor for final determination.

(3) The contracting officer of the (write in the name of the State or political subdivision) shall require, whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question accompanied by the recommendation of the contracting officer of the (write in the name of the State or political subdivision) shall be referred by the State through the Federal Emergency Management Agency to the Secretary of Labor for determination.

(4) If the contractor does not make payments to a trustee or other third

person, he may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is a part of this contract: *Provided however*, The Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(b) *Overtime requirements.* (As used in this clause, the terms "laborers" and "mechanics" include watchmen and guards.) No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic to be employed on such work in excess of 8 hours in any calendar day or in excess of 40 hours in any workweek unless such laborer or mechanic receives compensation at a rate of not less than 1½ times his basic rate of pay for all hours worked in excess of 8 hours in any such calendar day or in excess of 40 hours in any such workweek, as the case may be.

(c) *Violations; liability for unpaid wages; liquidated damages.* In the event of any violation of paragraph (a) or (b) of this section the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, in the event of any violation of paragraph (b) of this section, such contractor and subcontractor shall be liable to the United States (in the case of work under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic (including watchmen and guards) employed in violation of paragraph (b) of this section, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment

of the overtime wages required by paragraph (b) of this section.

(d) *Withholding for liquidated damages and unpaid wages.* The (write in the name of the State or political subdivision) may withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in paragraph (c) of this section. In the event of failure to pay any laborer or mechanic, including apprentices and trainees, employed by the contractor or subcontractor in the performance of construction work hereunder, all or part of the wages required by the contract, the (write in the name of the State or political subdivision) may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds until such violations have ceased.

(e) *Payrolls and basic records.* (1) Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records will contain the name and address of each such employee, his correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the ac-

tual cost incurred in providing such benefits.

(2) The contractor will submit weekly a copy of all payrolls to the (write in the name of the State or political subdivision) accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classifications set forth for each laborer or mechanic conform with the work he performed. A submission of a “weekly Statement of Compliance” which is required under this contract and the Copeland Regulations (29 CFR part 3) of the Secretary of Labor and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor under 29 CFR 5.5(a)(1)(iv) shall satisfy this requirement. The prime contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The contractor will make the records required under the labor standards clauses of the contract available for inspection by authorized representatives of the (write in the name of the State and the political subdivision, if any); the Federal Emergency Management Agency; and the Department of Labor; and will permit such representatives to interview employees during working hours on the job. Contractors employing apprentices or trainees under approved programs shall include a notation on the first weekly certified payrolls submitted to the contracting State (or political subdivision, as applicable) that their employment is pursuant to an approved program and shall identify the program.

(f) *Apprentices and trainees—* (1) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice

in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in paragraph (f)(2) of this section or is not registered or otherwise employed as stated above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction prior to using any apprentices on the contract work. The wage rate paid apprentices shall be not less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination.

(2) *Trainees.* Except as provided in 29 CFR 5.15, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the

wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(3) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(g) *Compliance with Copeland Regulations (29 CFR part 3).* The contractor shall comply with the Copeland Regulations (29 CFR part 3) of the Secretary of Labor which are herein incorporated by reference.

(h) *Ineligible bidders.* The contractor herein certifies as a condition of the contract that he is not listed on the Comptroller General's list of ineligible bidders published pursuant to regulations issued by the Secretary of Labor (29 CFR part 5) and the Davis-Bacon Act, as amended (40 U.S.C. 276a *et seq.*). This certification shall constitute a warranty, the falsity of which will render void this contract or subcontract, as the case may be.

(i) *Subcontracts.* The contractor will insert in any subcontracts in paragraphs (a) through (h) and (j) of this section and such other clauses as the Federal Emergency Management Agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

(j) *Contract termination; debarment.* A breach of any of paragraphs (a) through

(i) of this section may be grounds for termination of the contract, and for debarment as provided in 29 CFR 5.6.

[40 FR 42736, Sept. 16, 1975. Redesignated at 44 FR 56173, Sept. 28, 1979]

§ 308.5 Examination of payrolls.

(a) In cases where the contract involves construction work in excess of \$2,000, a certified copy of all payrolls and statements required to be submitted under the contract provisions prescribed in § 308.4, shall be checked by the State (or political subdivision, as applicable) against the applicable wage determination decision of the Secretary of Labor to verify labor standards compliance and to ascertain the following:

(1) That the rates paid to various classifications of employees are in conformity with the applicable wage determination decision.

(2) That each classification shown in the payrolls is a classification for which a rate was predetermined in the applicable wage determination decision.

(3) That there are included in the payrolls those classifications of workers who would logically perform the work performed during the weeks in question.

(4) That there is no disproportionate employment of laborers, helpers, apprentices or trainees.

(b) Unless transferred to the Federal Emergency Management Agency, the payrolls and statements shall be preserved by the State (or political subdivision, as applicable) for a period of three years from the date of completion of the contract and shall be produced at the request of the Secretary of Labor at any time during the three-year period.

[40 FR 42738, Sept. 16, 1975. Redesignated at 44 FR 56173, Sept. 28, 1979]

§ 308.6 Compliance.

In cases where the contract involves construction work in excess of \$2,000:

(a) The State shall make (or cause the political subdivision to make) an "on the site" labor standards check, at least once during the project and at least every six months on projects of

long duration, including without limitation the following:

(1) Interviewing of a representative number of employees including but not necessarily limited to one employee in each classification or craft to ascertain what work the employee is doing and his regular rate of pay. This information shall be checked against the payrolls and the applicable wage determination decision to verify compliance or noncompliance.

(2) Examining evidence of registration and certification with respect to apprenticeship and training plans to determine the correctness of classifications and any disproportionate employment of laborers, helpers, apprentices or trainees.

(b) In conducting investigations, including those of complaints of alleged violations (which shall be given priority) all statements, written or oral, made by an employee are to be treated as confidential and shall not be disclosed to his employer without the consent of the employee. All indications, including but not limited to all complaints, of alleged violations of labor standards brought to its attention shall be investigated by the State (or political subdivision at the State's direction) and the State shall require that all such indications brought to the attention of a political subdivision shall be forthwith brought to the attention of the State.

(c) If there is evidence of labor standards noncompliance, restitution shall be required of the contractor or subcontractor and the State (or political subdivision, as applicable) shall, after written notice to the contractor, withhold from the contractor such advances, guarantees and accrued payments as are administratively determined necessary to cover any liquidated damages and the restitution due laborers and mechanics employed by the contractor or subcontractor. The State (or political subdivision, as applicable) also has the option of terminating the contract in accordance with its provisions. If there is evidence that these violations were aggravated, willful, or resulted in underpayments of \$500 or more, a detailed report, including information as to restitution